

# *Greenwood Advisory Board of Zoning Appeals*

## **Rules of Procedure**

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## **ARTICLE 1 – JURISDICTION**

### **1. Jurisdiction of Board to Hear and Decide Administrative Appeals, Special Exceptions, and Variances.**

The Board of Zoning Appeals shall:

- (a) Hear and determine appeals from and review of any order, requirement, decision or determination made by an administrative official charged with the enforcement of any zoning ordinance or regulation or any ordinance requiring the procurement of an improvement location or occupancy permit, adopted pursuant to the provisions of the Indiana Code 36-7-4-600 series, as amended.
- (b) Grant or deny variances of use and variances from development standards (such as height, bulk or area) from the terms of any zoning ordinance adopted pursuant to the provisions of Indiana Code 36-7-4-600 series.
- (c) Grant or deny petitions for special use exceptions under the terms of any zoning ordinance adopted pursuant to the provisions of Indiana Code 36-7-4-600 series.

### **2. Cases to be Heard.**

All appeals from and reviews of any order, requirement, decision or determination by an administrative official and all hearings on variances of use, height, bulk and area, and all petitions for special use exception, shall be docketed with and heard by the Board of Zoning Appeals.

## **ARTICLE 2 – PUBLIC HEARINGS**

### **1. Time and Place of Public Hearings.**

- (a) Regular sessions designated as public hearings by the Board of Zoning Appeals, shall be held on the second (2nd) and fourth (4th) Mondays of each month, at 6:00 p.m. in the City Building, Greenwood, Indiana. If said date falls on a City recognized holiday, then such meeting shall be held on the following Wednesday at the same time and place.

### **2. Special Sessions.**

- (a) Special sessions may be called by the Chairman at his/her discretion or upon written request to the Director by two (2) members of the Board.
- (b) The Director shall send all members at least two (2) days in advance of a special meeting a written notice fixing the time and place of the meeting. Written notice of a special meeting is not required if the time of a special meeting is fixed at a previous regular meeting.
- (c) The Chairman, upon consultation with the City Attorney, may call an executive session of the Board.

### **3. All Meetings and Hearings Public.**

All regular and special meetings (not including executive sessions) of the Board shall be open to the public.

### **4. Quorum.**

- (a) A majority of members of the Board shall constitute a quorum. No action of the Board is official, however, unless concurred to by a majority of the Board.
- (b) The Chairman shall be a voting member on all matters coming before the Board.
- (c) Tie Votes – Whenever the vote of the board results in a tie on any petition, application of other matter, the board may resolve the tie by either (1) a motion to reconsider and re-vote; or (2) re-docket the matter for the next meeting.

### **5. Indecisive Vote.**

In any case where a vote of the Board does not result in official action of the Board, as set forth in Section 4 above, the petition shall be automatically re-docketed and heard at the next regularly scheduled meeting of the Board.

### **6. Petitions as Evidence.**

Every petition containing names of interested property owners favoring or opposing a proposed variance shall be accompanied by an affidavit of the person who circulated it which shall verify that all

signatures appearing thereon are true signatures of interested and affected property owners. The affidavit shall further contain the distance, in terms of feet, of the two (2) property owners signing the petition whose lands are nearest and furthest, respectively, from the site of the proposed variance. Petitions which are not accompanied by such affidavit shall be inadmissible as evidence.

## **7. Continuance.**

Requests by any interested party for continuance of any case may be filed in writing prior to, or at the beginning of, the Board's hearings, and/or be made orally at the beginning of the hearing. The party requesting a continuance shall have the burden of showing a good and sufficient cause therefore. It shall be within the discretion of the Board to grant or deny requests for continuance. The Board may, on its own motion at any time, continue the hearing of any case. No re-notification of interested property owners shall be required if a case is continued at a hearing for which proper notice was given by petitioner in compliance with the notice requirements of Article IV hereof, to a definite, specified hearing date of the Board.

## **8. Time Allowed and Procedure for Hearing of Cases.**

Petitioners and remonstrators, respectively, shall be permitted a total of 20 minutes, as follows, for the presentation of evidence, comments and questions at the public hearing of every case by the Board:

- (a) Petitioners and persons appearing in support of the petition being heard by the Board shall first have 15 minutes for the presentation of evidence, comments and questions in support of the matter being considered.
- (b) Remonstrators or persons appearing in opposition to the petition shall then have 15 minutes for the presentation of evidence, comments and questions in opposition to the matter being considered.
- (c) The petitioner shall then have 5 minutes for rebuttal, which shall include only evidence, com-

ments and questions in rebuttal of remonstrators' evidence and closing remarks.

- (d) Remonstrators or persons appearing in opposition to the petition shall then have 5 minutes for closing remarks.
- (e) The Chairman shall then call for questions and comments from members of the Board.
- (f) Following the question and comment period the Chairman shall then call for a motion on the case being heard.

The Chairman and in his absence or disability, the Vice-Chairman or other member presiding, shall, unless otherwise directed by a majority of the Board in session at the time, have authority to extend the time periods specified above, where appropriate, in the interest of affording to all interested parties a fair hearing.

## **9. Orderly Conduct Required.**

Every person appearing before the Board shall abide by the order and direction of the Board's presiding officer. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the Board and shall be dealt with as the Chairman deems fair and proper.

## **10. Any Party May Appear in Person, by Agent, or by Attorney.**

At hearings before the Board, any party may appear in person, by agent or by attorney.

- (a) An attorney representing any party, petitioner or remonstrator may testify as to facts of which he has particular knowledge relating to the issues of the case, but in so testifying the attorney shall be sworn and subject to cross-examination, as are other witnesses.

## **11. Contacting any Board Member Regarding Pending Case Prohibited.**

No person (whether in person or by agent or by attorney), firm, corporation, public employee or body politic shall contact any member of the Board of Zoning Appeals, orally or in writing, in advance of public hearing, on a case then pending for decision by such Board, for the purpose of attempting

to influence any member's decision.

Any such person, firm, corporation, public employee, or body politic may appear in person, by agent, or by attorney, at public hearing and submit evidence or present testimony germane to the issue in controversy where the opposing party is permitted to cross-examine and present rebuttal evidence and testimony.

## **12. No Decision or Finding Unless Based Upon Facts in Permanent Records.**

No decision or finding of the Board shall be made unless it is based upon facts submitted at a hearing and made a part of the permanent record. Provided, however, nothing herein contained shall deny the right of the Board members to inspect land involved in any petition to be heard.

## **13. Disqualification of Board Members in Case of Financial Interest.**

A member of the Board who has some financial interest in any case presented to the Board shall disqualify himself insofar as the particular case is concerned, shall not sit as a member of the Board during the hearing of the particular case, and shall not participate in the Board's hearing, findings of fact, or decision in such case.

## **14. All Testimony Under Oath.**

All testimony before the Board shall be given under oath or affirmation, which shall be administered by some person qualified to administer oaths.

## **15. Record of Hearing.**

A record shall be made of all hearings of the Board and shall remain on file with the secretary. Copies of such record of any hearing may be ordered by any party ordering such copy or copies.

# **ARTICLE 3 – FILING OF CASES**

## **1. Filing Required at least Thirty-one (31) Days Prior to Hearing.**

All applications to the Board shall be filed, in the required numbers, at least thirty-one (31) days prior to the hearing on such application.

## **2. Filing on Board's Forms Required.**

All applications to the Board shall be made on forms to be supplied by the Board entitled Application Kit Greenwood Board of Zoning Appeals.

Any communication purporting to be an application not on forms furnished by the Board or not containing the information called for on said forms, shall be regarded as a mere notice of intention to seek relief and shall be of no force or effect until it is made on and in the form required.

## **3. Filing Fee.**

The petitioner shall pay a filing fee in accordance with the "Official Fee Schedule" as established by the Common Council. Such fee shall be paid at the time of the filing of this petition.

# **ARTICLE 4 – NOTICE**

## **1. Notice Requirements.**

Notice of all petitions or cases to be heard by the Board shall be given to all interested parties or property owners in the following manner:

(a) For Variance and Special Use Petitions:

(1) Notice by Publication – Notice by publication shall be given by the petitioner, in the Board's prescribed form, in two (2) newspapers of general circulation in Johnson County and the City of Greenwood at least fifteen (15) days before the hearing, and proof of publication shall be made by an affidavit of the publisher attached to a copy of the notice taken from the paper in which it was published and filed with the Board. Such affidavit shall specify the County, the time when and the paper in which the notice was published.

(2) Additional Notice to Owners of Adjoining Land – Additional notice shall be given by the petitioner, by mail with certificate of mailing or in person, at least fifteen (15) days before the hearing, to owners of all adjoining parcels of ground within three hundred (300) feet or two properties in depth of the subject property, whichever is

greater. For purposes of the notice requirement of this paragraph, where any such adjoining parcels of ground are owned by petitioner, the subject property shall be deemed to include such adjoining land owned by petitioner.

For the purpose of determining names and addresses of legal title owners, the records in the bound volumes of the most recent real estate tax assessment records, as they appear in the offices of various Township Assessors shall be deemed to be true names and addresses of persons entitled to notice.

- (3) On-Site Signage - Signs prescribed by the Board of Zoning Appeals shall be displayed on-site giving notice to the general public of a pending petition and the hearing date thereof. Signs shall be used for the following types of petitions: dimensional variance, use variance, special exception variance.

One sign shall be required for each street frontage of the subject property. On-site signs shall be displayed for fifteen (15) continuous days prior to the public hearing date for which the petition is scheduled.

Petitioner shall be responsible for locating and fastening the sign in such a manner that good visibility is maintained for motoring public to see and read the sign. Signs may be attached to a building wall or window or may be attached to poles or support structure in the yard of the property, so long as good visibility is obtained and maintained. Such notice shall state:

- the substance of said petition;
- the general location and legal description of the land involved in the petition and the name and address of the petitioner;
- the time when said petition has been set for hearing by the Board of Zoning Appeals, and the place of said hearing, and

- that the petition may be examined in the office of the Secretary of the Board of Zoning Appeals during regular office hours.

(b) For Appeals of Administrative Decisions:

- (1) Notice by Publication shall be the same as required for a variance as set for in paragraph A. (1) above.
- (2) Notice of Adjoining Property Owners is not automatically required. However, the BZA may require petitioners to notify persons who may be directly affected by the matters of the petition, which may include adjoining property owners.

- (c) For Modification or Termination of Written commitments: See requirements in Article 9 – Written Commitments.

## **ARTICLE 5 – DOCKETING OF CASES**

### **1. Docketing of Cases.**

Each case shall be filed in proper form, with the required data, numbered serially and placed on the docket by the Director of Planning and Zoning.

The terms of the Board being the calendar year, the docket numbers shall begin anew on January 1st of each year, and shall be hyphenated with the number of the year and the initial indicating the character of the case.

### **2. Order of Hearing Cases.**

On the date set for hearing, cases shall come before the Board in the regular order of their consecutive numbers, unless the Chairman, at his/her discretion, deems it necessary to take cases in an order different than their numerical order or as they are listed on the meeting agenda.

Provided, however, cases re-docketed following an indecisive vote of the Board and cases continued from a previous hearing of the Board shall be heard at the beginning of the public meeting, before the regularly docketed cases.

Further provided, however, administrative appeals shall take precedence over petitions for variance



or special exception pending on the docket.

### **3. Cases Docketed for Each Board Meeting Shall be Limited to Not More Than Three in Number Per Meeting.**

The Director of Planning and Zoning shall limit the agenda for each public meeting of the Board to no more than three cases to be heard per meeting of the Board of Zoning Appeals. Such limitations do not apply to the Board taking final action on cases through the adoption of written findings of fact.

## **ARTICLE 6 – FINAL DISPOSITION OF CASES**

### **1. Dismissal of Cases.**

The Board may dismiss a case for want of prosecution or for lack of jurisdiction.

### **2. Withdrawal of Cases.**

No case may be withdrawn by the petitioner after a vote has been ordered by the Chairman. No case which has been withdrawn by the petitioner shall again be placed on the docket for consideration by the Board within a period of three (3) months from the date of said withdrawal, except upon motion to permit re-docketing adopted by the unanimous vote of all members present at a regular or special meeting of the Board.

### **3. Re-docketing Following Adverse Decision.**

No case which has been decided adversely against the petitioner shall again be placed on the docket for consideration by the Board within a period of twelve (12) months from the date of the decision previously rendered, except upon motion to permit re-docketing adopted by the unanimous vote of all members present at a regular or special meeting of the Board.

### **4. Judicial Review by Certiorari.**

Every decision of the Board of Zoning Appeals shall be subject to review by certiorari in accordance with Indiana Code 36-7-4-1000 series, as amended. Such petition for certiorari shall be pre-

sented to the court within thirty (30) days after the decision of the Board of Zoning Appeals. The petitioner for certiorari shall pay the costs of preparation of the transcript of the hearing before the Board, if the writ of certiorari calls for a transcript of evidence before said Board.

## **ARTICLE 7 – OFFICERS, BOARD RECORDS**

### **1. Officers of the Board.**

Annually at the first regular meeting of the Board, a Chairman and Vice-Chairman shall be selected from its members. The Chairman shall preside at all meetings and in his absence or disability the Vice-Chairman shall preside. If both Chairman and Vice-Chairman are absent the members present shall select a chairperson for that particular meeting.

### **2. Chairman to Decide Points of Order.**

The Chairman, subject to these rules, shall decide all points of order of procedure, unless otherwise directed by a majority of the Board in session at that time.

### **3. Minutes, Records, Public Records.**

The Board shall keep minutes of its proceedings, investigations and other official actions and in all cases heard by it, and shall record the vote on all actions taken. All minutes and records shall be filed in the office of the Director of Planning and Zoning and shall be public records.

### **4. Ballot Vote.**

In all cases heard by the Board, the Board's vote shall be by ballot. All such ballots shall remain on file in the office of the Director of Planning and Zoning and shall be public records.

### **5. Written Findings.**

In all cases decided by the Board, the Board shall adopt written findings of fact. All such findings shall remain on file in the office of the Director of Planning and Zoning and shall be public records.

## **ARTICLE 8 – AMENDMENTS**

### **1. Amendment of Rules of Procedure.**

Amendments to these Rules of Procedure may be made by the Board of Zoning Appeals only upon the affirmative vote of a majority of the members.

### **2. The Suspension of any Rule of Procedure.**

The suspension of any rule of procedure may be ordered at any meeting by unanimous vote of those present.

## **ARTICLE 9 – WRITTEN COMMITMENTS**

### **1. Requirements for Written Commitments.**

- (a) The Board of Zoning Appeals may allow or require written commitments in connection with a petition for a variance or special use exception pursuant to Article 17, Zoning ordinance 82-1, as amended.
- (b) Written commitments shall be prepared and executed in the form prescribed by the Board of Zoning Appeals. When necessary, the prescribed form may be modified in order to conform to the type of commitment needed and not already provided for in the prescribed form. However, the basis of the prescribed form shall be used, with the content modified only as needed to conform to the type of commitment permitted or required. An otherwise modified form may be rejected by majority vote of the Board of Zoning Appeals.
- (c) Written commitments shall be recorded in the Office of the Johnson County Recorder (as set forth below in Recording).

### **2. Recording.**

- (a) Commitments shall be recorded in the office of the Johnson County Recorder.
- (b) The Board of Zoning Appeals shall require the owner of the parcel giving a written commitment to either record the commitment or authorize the City of Greenwood to record the commitment at the owner's expense.

- (c) Commitments in connection with special exceptions, special uses, contingent uses, conditional uses or zoning variances shall be recorded upon the granting of the approval.

### **3. Binding Effect.**

- (a) Unless modified or terminated as described below, a written commitment that is permitted or required by the Board of Zoning Appeals is binding on:
  - (1) the owner of the parcel;
  - (2) a subsequent owner of the parcel; and
  - (3) a person who acquires an interest in the parcel.
- (b) Unless modified or terminated as described below, a condition and/or written commitment that is permitted or required by the Board of Zoning Appeals for a use variance runs with and is binding on the owner of the parcel. Subsequent owners or persons who acquire an interest in the parcel must apply for a new variance, if intending to use the property for a purpose other than what is permitted for the property by the City Zoning Ordinance.
- (c) A condition or written commitment that is permitted or required by the Board of Zoning Appeals is binding on the owner of the parcel even if the condition or commitment is unrecorded (see "Recording" above); however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment.

### **4. Effective Date of Commitment.**

A condition and/or written commitment permitted or required by the Board of Zoning Appeals shall take effect upon the approval of the special exception, special use, contingent use, conditional use, or zoning variance related to the condition and/or commitment.

### **5. Covenant Running With the Land.**

A written commitment that is permitted or required by the Board of Zoning Appeals shall be considered a covenant running with the land and shall bind all sub-

sequent owners to its terms and conditions and any subsequent modification thereto made pursuant to this instrument, statutes of the State of Indiana or ordinance of the City of Greenwood.

## **6. Enforcement.**

Conditions and/or written commitments permitted or required by the Board of Zoning Appeals may be enforced jointly and severally by:

- (a) The Board of Zoning Appeals; and
- (b) Owners of all parcels of ground adjoining the real estate involved in the relevant condition or commitment to a depth of 300 feet. The identity of such owners shall be determined from the records of the Office of the Johnson County Auditor which shall list the current owners of record. For purposes of this paragraph, the cutoff date for such determination shall be at twelve (12) o'clock noon on the date of filing for enforcement.

## **7. Modification and Termination.**

A condition and/or written commitment that is permitted or required by the Board of Zoning Appeals may be modified or terminated only by a decision of the Board of Zoning Appeals made at a public hearing after notice as provided below. The request for modification or termination may be initiated by the property owner or by the Board of Zoning Appeals.

When requesting amendment or termination of conditions and/or written commitments the petitioner shall have the burden to demonstrate that:

- (a) there is a legal reason why one or more of the conditions and/or commitments cannot be met;
- (b) there has been a change in the character or conditions of the subject property or of neighboring property; or
- (c) other reasons exist or have come about to justify the requested amendment or termination.

## **8. Public Notice.**

When the Board of Zoning Appeals is going to consider modification or termination of an existing condition and/or written commitment, notice of a public hearing shall be given in the following manner:

- (a) Newspaper - Notice by publication shall be given by the petitioner in two (2) newspapers of general circulation in the City of Greenwood, and shall be published at least thirty (30) days prior to the public hearing. A proof of publication affidavit from each publisher shall be submitted at least three (3) days prior to the hearing.
- (b) Mail - Written notice of the public hearing shall also be given by the petitioner to all interested parties or property owners by certified return receipt mail post marked at least thirty (30) days prior to the hearing. For purposes of notice given under this Section, "Interested parties or property owners" shall mean the owner(s) of the real estate giving the relevant condition and/or commitment and the owners of all parcels of ground adjoining said real estate.

## **9. Voided by Zoning Change.**

Existing conditions and/or written commitments are automatically voided by state statute if a zoning map change is adopted for the subject property by the Greenwood Common Council.

# **ARTICLE 10 – APPEALS TO THE BOARD OF ZONING APPEALS**

An appeal filed with the Board must specify the ground of the appeal and must be filed within thirty (30) days of the date on which the administrative official or staff member mailed, delivered, or otherwise transmitted the written order, requirement, decision or determination appealed from to the party filing the appeal.

The administrative official from whom the appeal is taken shall, on request of the Board, transmit to it all documents, plans, and papers constituting the record of the action from which an appeal was taken.

Certified copies of the documents, plans and papers consulting the record may be transmitted for purposes of the above requirement.



Upon appeal, the Board may reverse, affirm or modify the order, requirement, decision or determination appealed from. For this purpose the Board has all the powers of the official from which the appeal is taken.

Adopted this 11th day of August, 2003.

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Phil Tinkle, Chairman  
Greenwood Board of Zoning Appeals